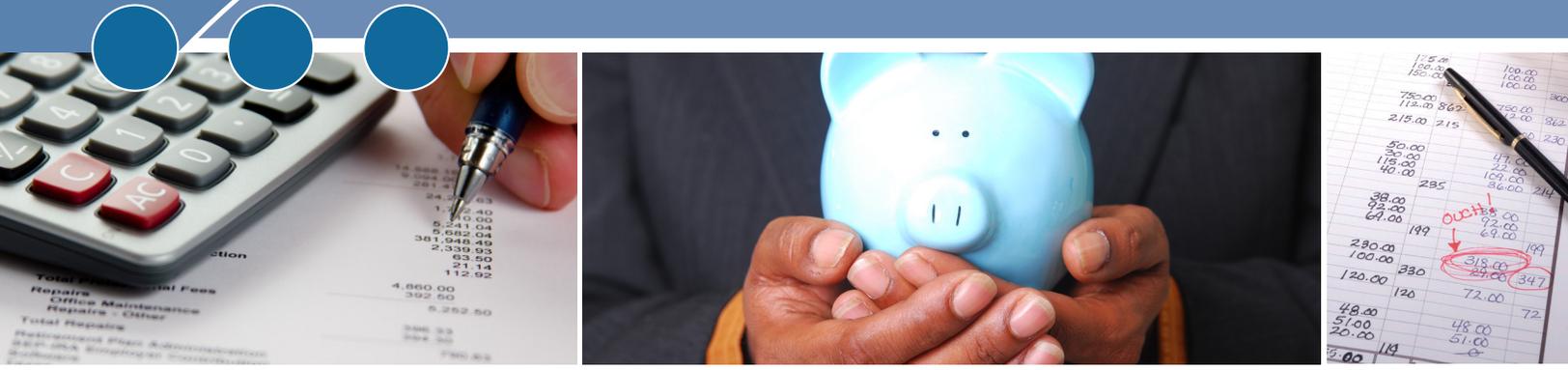


CAPLAW FAQ

A series of common legal questions and answers for the CAA network



How does the Uniform Guidance address statutory administrative cost limits, public CAA indirect cost rates, negotiations with a state and enforcement?

March 2015 Recent questions CAPLAW received about the treatment of indirect costs under the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, (the Uniform Guidance, also known as the Super Circular) focus on: (1) administrative cost limits imposed by a federal statute, (2) the availability of the 10% de minimis rate to public CAAs, (3) negotiation of the indirect cost rate provisions with a state agency (pass through entity) and (4) compliance by a state agency with the indirect cost provisions. Since these questions share the common thread of addressing issues relating to the Uniform Guidance indirect cost rate provisions, we compiled them into this FAQ.¹

Stay tuned for a separate FAQ addressing additional questions about the treatment of indirect costs under the Uniform Guidance that resulted from our recent webinar series, [Ins and Outs of Indirect Costs Under the Super Circular](#), which is available on demand.

Do Uniform Guidance provisions about indirect cost rates trump a limit on administrative costs imposed by a federal statute?

No. The preamble to the December 2013 Federal Register notice for the Uniform Guidance notes that “[t]his guidance does not change or modify any existing statute or guidance otherwise based on any existing

statute.” See 78 Fed. Reg. 78590. In particular, when addressing the application of the cost principles (which contain the rules on indirect costs), the Uniform Guidance states that:

“[t]he [cost] principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

2 C.F.R. § 200.100(c), 2 C.F.R. § 75.100 (emphasis added). Thus, limits on administrative costs imposed by a federal statute still apply, notwithstanding the Uniform Guidance provisions that require federal funding sources and pass-through entities (such as states) to recognize a federal grantee or subgrantee’s indirect cost rate, i.e., a federally negotiated indirect cost rate (NICR) or the so-called “10% de minimis rate.” Examples of administrative cost limits imposed by federal statute include those applicable to Head Start, Weatherization Assistance Program and Low-Income Home Energy Assistance Program (LIHEAP) funds.

Is the 10% de minimis rate available to public CAAs that receive direct federal funding?

Yes, in certain circumstances. The Council on Financial Assistance Reform (COFAR) explains in their frequently asked questions (FAQ) about the Uniform Guidance that a state or local government department that has never negotiated an indirect cost rate with the federal government and receives less than \$35 million in direct federal funding per year may use an indirect cost rate of 10% of modified total direct costs (i.e., the 10% de minimis rate). The department must keep documentation of its decision to obtain a rate on file. See FAQ 200.414-1 in the [COFAR FAQ](#).

May a state refuse to recognize a CAA's NICR?

No. COFAR clarifies in its FAQ that if a CAA has a NICR with the federal government, the state (or other pass-through entity) must apply it. See FAQ 200.331-6 in the [COFAR FAQ](#). Keep in mind, however, that if the funds being passed through are subject to a statutory administrative cost limit (such as Weatherization or LIHEAP funds), that limit still applies.

If a CAA does not have a NICR, can a state require it to accept a rate lower than the 10% de minimis rate?

No. COFAR explains in its FAQ that it is not permissible for a state (or other pass-through entity) to “force or entice a proposed subrecipient without a negotiated rate to accept less than the de minimis rate.” See FAQ 200.331-6 in the [COFAR FAQ](#). Thus, a state must allow a CAA that does not have a federally negotiated rate to apply at least the 10% de minimis rate. This appears to be the case even if the CAA previously had a NICR but does not currently because it no longer receives direct federal funding. Again, however, statutorily imposed administrative cost limits will continue to apply.

What if the state refuses to comply with the Uniform Guidance provisions relating to indirect cost rates?

CAAs are reminded by COFAR in its FAQ that the Uniform Guidance contains provisions detailing remedies for non-compliance with Uniform Guidance provisions that apply to all non-federal entities, including states in their role as pass-through entities. See FAQ 200.331-7 in the [COFAR FAQ](#). The provisions explain that remedies for non-compliance may include:

- imposing additional conditions such as requiring payments as reimbursements,
- disallowing all or part of the cost of the non-compliant action,
- suspending or terminating all or part the federal award,
- initiating suspension or debarment proceedings, and/or
- withholding other federal awards for the program or taking other legally available remedies.

See 2 C.F.R. § 200.338, 2 C.F.R. § 75.371.

Scenarios of non-compliance may include a state as a pass-through entity refusing to recognize a CAA's negotiated indirect cost rate, prohibiting an otherwise eligible CAA from receiving the 10% de minimis rate or forcing a CAA to accept a rate below 10%. If a CAA is confronted with such scenarios or others for which it believes that the state is not acting in compliance with the Uniform Guidance, it should remind the state of its obligations under the Uniform Guidance and report the non-compliance to the federal funding source that oversees the federal grant at issue.

Endnotes

¹ Note that the FAQ references citations to the Uniform Guidance (2 C.F.R. Part 200) as well as to the Department of Health and Human Services codification of the Uniform Guidance (45 C.F.R. Part 75). The two are very similar and we note differences, when they exist.

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